

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-20104-CR-BECERRA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARCANGEL PRETEL ORTIZ,

Defendant.

_____ /

**FEDERAL PUBLIC DEFENDER'S MOTION TO WITHDRAW
AND TO APPOINT CONFLICT-FREE COUNSEL**

The Office of the Federal Public Defender respectfully submits this motion to withdraw and to appoint conflict-free counsel and in support thereof states as follows.

1. Mr. Ortiz is charged by way of indictment with providing material support or resources to carry out a violation resulting in death in violation of 18 U.S.C. § 2339(A)(a), conspiracy to kill or kidnap outside the United States in violation of 18 U.S.C. § 956(a)(1), and related charges. (DE 552).

2. The Office of the Federal Public Defender was appointed to represent Mr. Ortiz. (DE 120).

3. Trial is currently scheduled to commence on January 21, 2025, with calendar call scheduled for January 14, 2025. (DE 651). A motion to continue is pending. (DE 844).

4. It has recently come to the attention of undersigned counsel that an irreconcilable conflict of interest exists between Mr. Ortiz and another current client of the Office of the Federal Public Defender ("FPD"). Due to the nature of the conflict,

and following consultation with Federal Public Defender Hector Dopico, undersigned counsel respectfully requests that the Court discharge the FPD and appoint independent counsel to represent Mr. Ortiz.

5. The Federal Public Defender consulted with ethics expert, Brian Tannebaum, Esq., and he advised that there is an actual conflict and that the FPD office must withdraw from the case.

6. The undersigned also contacted the Florida Bar Ethics Hotline to seek advice from bar counsel. The undersigned was again advised that there is a conflict that cannot be waived and that the FPD should withdraw.

7. Mr. Ortiz is entitled to conflict-free representation pursuant to both the Sixth Amendment's guarantee of effective assistance of counsel, *see Cuyler v. Sullivan*, 446 U.S. 335 (1980); *Halloway v. Arkansas*, 435 U.S. 475 (1978); *McConico v. Alabama*, 919 F.2d 1543 (11th Cir. 1990), and the Rules Regulating the Florida Bar, *see* Fla R. Prof'l Resp. 4-1.7(a) ("[a] lawyer must not represent a client if: (1) the representation of 1 client will be directly adverse to another client; or (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.").¹

8. Public defender offices are analyzed as law firms for purposes of imputed conflicts of interest; therefore, if any lawyer within the office would be prohibited from representing a client, all members of the office are prohibited from knowingly

¹ This Court's Local Rules incorporate the Florida Bar's Rules of Professional Conduct. *See* S.D. Fla. Local Rule 11.1(c) (Rev. Dec. 1, 2022).

representing that client. *See* Fla R. Prof'l Resp. 4-1.10(a); Cmt. To Fla R. Prof'l Resp. 4-1.10 (defining "firm" and explaining how conflict imputation applies to legal services organizations).

9. The Office of the Federal Public Defender and undersigned counsel have a conflict of interests as to the continued representation of Mr. Ortiz, as described above.

10. Accordingly, undersigned counsel respectfully requests that this Court permit the Office of the Federal Public Defender to withdraw, and to appoint conflict-free counsel. *Cf. Wheat v. United States*, 486 U.S. 153, 163 (1988); *United States v. Ross*, 33 F.3d 1507, 1523 (11th Cir. 1994).

11. Undersigned counsel has advised AUSA Andrea Goldbarg that she intends to move to withdraw.

WHEREFORE, undersigned counsel respectfully requests that the Court issue orders allowing the Federal Public Defender's Office to withdraw from the representation of Mr. Ortiz and appointing substitute, conflict-free counsel.

Respectfully submitted,

HECTOR DOPICO
FEDERAL PUBLIC DEFENDER

BY: /s/**Bunmi Lomax**
Bunmi Lomax
Assistant Federal Public Defender
Special A Number: A5501975
150 West Flagler Street
Suite 1700
Miami, Florida 33130-1556
Tel: 305-530-7000
bunmi_lomax@fd.org

CERTIFICATE OF SERVICE

I HEREBY certify that on October 25, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/Bunmi Lomax

Bunmi Lomax